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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,023	10/10/2003	Mario J. Bravomalo	29471.4	3171
716 7590 09/17/2009 COX SMITH MATTHEWS INCORPORATED 112 EAST PECAN STREET, SUITE 1800 SAN ANTONIO, TX 78205-1521				
EXAMINER				
PATEL, JAYESH A				
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2624				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/684,023

Applicant(s)

BRAVOMALO ET AL.

Examiner

JAYESH PATEL

Art Unit

2624

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 51-76 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 51--53, 55, 57-59 and 67-76 is/are rejected.
- 7) ☐ Claim(s) 54, 56 and 60-66 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08/12/2009 has been entered.

Response to Arguments

Applicant's arguments with respect to claims 51-76 have been considered but are moot in view of the new ground(s) of rejection.

Double Patenting

Claims 73,75 and 76 are objected to under 37 CFR 1.75 as being a substantial duplicate of claim 51. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 51,53, 55, 57-59, 67,73,75 and 76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Posa (US 20030108851) hereafter Posa in view of Posa.

Regarding claim 51, Posa discloses a method for producing an image predictive of a person's appearance resulting from following a prescribed regimen, said method comprising:

receiving a first data set associated with said person (**para 0005 where an initial image is formed of a person either in two dimension or three dimension at an initial time meets the limitation of receiving a first data set associated with a person to form an initial image, paras 0016-0017 also discloses the image data set, para 0033 also discloses data set**); said first data set comprising a body shape designation (**Para 0005 assisting a person in achieving a desired body shape includes designating a body shape initially in order to achieve a desired body shape, para 0020 also discloses body shape designation, displaying a probable future image representative of a probable future body shape of the person will require initial body shape designation at para 0005**);

creating a first image representative of said person in a pre-regimen condition (**initial stage before consulting with fitness advisor or healthy**

process at para 0005 meets the limitation of pre-regimen condition) by modifying a generic image based on said first data set (a stereoscopic image is created of a person using the recorded images or initial image data sets at para 0017);

receiving a second data set comprising at least one goal desired from said regimen **(para 0005 and para 0014 which discloses a goal and data set);**

creating a second image representative of said person in a post-regimen condition by modifying said first image based on said second data set **(para 0017 where further using the height and waist measurements data the stereoscopic images are modified for the particular maintenance program or regimen, para 0030 and 0031 discloses the modified images of a person based on the program);** and displaying said second image **(on the computer 110 the image is displayed as seen in fig 1, para 0013 discloses display of images).**

Posa however does not explicitly recite said body shape designation being representative of where fat is located on said person. Posa recites **at para 0024 "body parts comprising predominantly of fat"**. Posa further recites at para **0022 "projecting future shape of the body part"**. Posa further recites in **para 0005 determining body fat percentages as a body parameter differences** which clearly means that the designated body shape is representative of fat in order to see the differences. Thus Posa clearly discloses the limitations of claim 51.

Regarding Claim 53, Posa discloses the method of claim 51. Posa discloses further comprising calculating an ideal weight and an estimated body fat percentage for said person at **(Page1 Para 0005)**.

Regarding Claim 55, Posa discloses the method of claim 51. Posa further disclose wherein said creating a second image comprises calculation of an age factor **(Page 2 Para 0026 where the data collected is used in creating the image)**.

Regarding Claim 57, Posa disclose the method of claim 51. Posa further disclose wherein said at least one goal is selected from the group consisting of weight loss, muscle gain **(body building)**, and a combination of weight loss and muscle gain at **(Page 1 Para 0001 and Para 0005)**.

Regarding Claim 58, Posa disclose the method of claim 51. Posa further disclose wherein said regimen comprises at least one of the following: resistance exercise, cardiovascular exercise, nutrition planning, dietary supplement intake, and personal training at **(Page 1 Para 0010)**.

Regarding Claim 59, Posa disclose the method of claim 51. Posa further disclose wherein said at least one goal comprises muscle gain and wherein said muscle gain **(body building at Para 0001)** is calculated based on at least one of

the following factors: a base muscle gain factor; a supplement boost factor; a resistance compliance factor; an age factor; a nutrition factor (calorie intake); and a gender factor at **(Paras 0010, 0011, 0026 and 0029)** where age diet and gender are used for creating the images with respect to the muscle gain or **(body building)** program.

Regarding Claim 67, Posa disclose the method of claim 53. Posa further disclose comprising recalculating said body fat percentage to account for fat loss or muscle gain resulting from said regimen in **(Para 0005)** where the difference is determined between before and after images. Posa discloses the difference and this is calculated based on the calculation and recalculation in the before and the after images. Posa further discloses determining the progress level of the person at intervals during the program in **para 0005** which is recalculating the body fat percentage.

Regarding Claim 72, Posa disclose the method of claim 51. Posa disclose further comprising: adjusting said first image by independently adjusting **(providing a program to achieve a desired body shape (body building), exercise program will adjust the muscle and body fat in Para 0005 and 0001)** at least one of a muscle layer and a fat layer. Posa disclose taking the difference by comparing with the initial body parameter to calculate the progress.

Regarding claim 73, see the explanation of claim 51.

Regarding claim 75 see the explanation of claim 51.

Regarding claim 76 see the explanation of claim 51.

Claims 52 and 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Posa (US 20030108851) hereafter Posa in view of Crampton (US 7184047) hereafter Crampton.

Regarding Claim 52, Posa discloses the method of claim 51. Posa disclose the body shape designations (measurements of body parameters such as waistline, body volume body weight representative of the body shape in page 1 Para 0005) and is silent and however does not expressly disclose wherein said body shape designation is selected from pear- shaped (top portion slim and middle part wide), apple-shaped (middle part of the body wide or round), and straight-shaped (skinny all the way like a skeleton) of the individuals. Crampton disclose said body shape designation is selected from **(transformation of stored avatar geometry to resemble calculated geometry of the user based on selection of different generic avatars stored representing adults, children, men and women or various shapes which forms the basis of generating the avatars at Col 55 lines 6-21 and 46-47)** and will be with in one of ordinary skill to select from the varieties such as pear- shaped, apple-shaped,

and straight-shaped as claimed. Crampton discloses generating computer models of individuals at **Col 1 lines 61-64** and further discloses generating the simulated images representing the effects of the weight loss at **Col 52 lines 14-18** due to which the user can make decision about dieting plan goal. Crampton discloses a method and program which creates computer models of individuals in different poses which is an improvement from the single pose generation which does not allow studying the internal structure (**Col 1 lines 21- 59**). Crampton and Posa are from the same field of endeavor and are analogous art, therefore it would have been obvious for one of ordinary skill in the art at the time the invention was made to have used the teachings of Crampton in the method and apparatus of Posa for the above reasons. The various shapes as disclosed by Crampton above would also include such shapes as claimed even though not expressly recited.

Regarding Claim 74, Posa disclose the method of claim 73. Posa discloses in figs 1 and 2 where GUI is shown which would include the adjustment, however does not recite in exact claim language a slider bar in GUI. Crampton disclose further wherein said adjusting (editing) is performed by moving a slider bar in a graphical user interface (**Figs 10-14 where the arrows with the slider bars are used to edit the images**).

Claims 68-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Posa in view of Abrams et al. (US 5673691) hereafter Abrams.

Regarding Claim 68, Posa disclose the method of claim 51. Posa further disclose that his invention is an improvement in health related monitoring in para 0004. Posa however do not expressly recite further comprising the step of estimating at least one health risk for said person in said pre-regimen condition.

Abrams disclose a method and apparatus that monitor weight loss program that reduce and control diabetes, stress, hypertension and other health conditions at **(Col 5 Lines 40-43)** which would comprise estimating at least one health risk for said person in said pre-regimen condition. Posa and Abrams are combinable because they are from the same field of endeavor and are analogous art. The suggestion/motivation would be precision, flexibility and immediacy in weight monitoring and caloric adjustment by dynamically adjusting the weight and the behavior at **(Col 5 Lines 19-29)** as disclosed by Abrams. Therefore it would have been obvious for one of ordinary skill in the art at the time the invention was made to have used the teachings of Abrams of provide appropriate warnings and adjustments in the method and apparatus of Posa for the above reasons.

Regarding Claim 69, see the explanation of Claim 68.

Regarding Claim 70, see the explanation of Claim 68.

Regarding Claim 71, see the explanation of Claim 68.

Alternate rejections to claims.

Claim 51-52, 73, 75 and 76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Massengill (US 20020064302) hereafter Massengill.

Regarding claim 51, Massengill discloses a method for producing an image predictive of a person's appearance resulting from following a prescribed regimen, said method comprising:

receiving a first data set associated with said person; said first data set comprising a body shape designation **(para 0026 which discloses an image of a person is provided and other patient (person) data is provided including the modifications desired to the breast (body shape))**;

said body shape designation being representative of where fat is located on said person **(para 0027,0037 breast have fat inherently to the body part and para 0034 discloses fat pad which would meet the limitation of the location of the fat)**;

creating a first image representative of said person in a pre-regimen condition by modifying a generic image based on said first data set **(Para 0047 which discloses the scanned photographs are morphed and simulated**

which meets the limitation of modifying the generic image or photograph before the procedure, Para 0030 also discloses that the original photographs are properly sized and standardized which meets the above limitation);

receiving a second data set comprising at least one goal desired from said regimen **(inputting desired modifications to the person's or patients own image of the desired procedure of breast augmentation or breast enlargement or reduction plan at para 0026);**

creating a second image representative of said person in a post-regimen condition by modifying said first image based on said second data set; and displaying said second image **(providing the results of the modifications to the patient or person as disclosed in paras 0026, 0037 and 0051).**

Regarding claim 52, Massengill discloses the method of claim 51 wherein said body shape designation is selected from pear-shaped, apple-shaped, and straight-shaped **(at para 0026 and 0037 where the breast enlargement or reduction performed on breasts are designated body shape and breasts appear in various shapes and one of them could be shaped like an apple (round like a ball) meeting the claim limitation).**

Regarding claim 73 see the explanation of claim 51 where the breast enlargement or reduction is performed and breasts are composed of fat and muscle layers.

Regarding claim 75 see the explanation of claim 51.

Regarding claim 75 see the explanation of claim 73.

Allowable Subject Matter

Claims 54, 56, 60-66 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAYESH PATEL whose telephone number is (571)270-1227. The examiner can normally be reached on 5-4-9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Werner can be reached on 571-272-7401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

09/03/2009
/JAYESH PATEL/
Examiner, Art Unit 2624

/Brian P. Werner/
Supervisory Patent Examiner, Art Unit 2624